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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 701/2024 & I.A. 36785/2024, I.A. 46353/2024**

**PRIMUS SUPER SPECIALITY HOSPITAL UNIT OF DELHI
HOSPITAL SOCIETY**

.....Plaintiff

Through: Mr. Kapil Midha, Ms. Samiksha
Gupta, Mr. Radha Raman Tiwari,
Advocates

versus

PRIMUS HOSPITAL & ORS.

.....Defendants

Through: Mr. Nikhil Chawla, Mr. Om Ram,
Advocates along with Dr. Abhinav
Arora, D-2 in person
(M:9013685427)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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27.11.2024

1. The present suit has been filed seeking permanent injunction restraining the defendants from infringing the plaintiff's registered



trademark 'PRIMUS' / ' '. It is the case of the plaintiff that the defendants are running a hospital with an identical mark, 'PRIMUS' /



2. A comparison of the trademarks of the plaintiff and marks being used by the defendants, is as under:



<u>Plaintiff's Marks</u>	<u>Defendant's Marks</u>
1. PRIMUS 2.  3. PRIMUS ORTHO & SPINE HOSPITAL	1. PRIMUS 2. 
4. PRIMUS HEART CENTRE 	

3. When the matter was listed for hearing on 20th August, 2024, learned counsel for the defendants had made a categorical statement that the defendants are willing to change the name of the their hospital.

4. For this purpose, the matter had been referred to mediation at the request of the parties. However, the mediation has been unsuccessful.

5. Today, learned counsel appearing for the defendants, upon instructions from Dr. Abhinav Arora, i.e., defendant no.2, submits that the defendants have already taken steps to change the name of their hospital. He further submits that the defendants have already withdrawn their trademark application for registration of the mark 'PRIMUS'.

6. This Court also takes note of the affidavit filed by Dr. Abhinav Arora, dated 27th September, 2024, wherein, it had been deposed, as follows:



“xxx xxx xxx

4. I state that prior to the service of the suit files by the plaintiff, I had no knowledge about the plaintiff and/or its use of the Mark ‘PRIMUS/PRIMUS SUPER SPECIALITY HOSPITAL’.

5. I say that the present matter was first listed before this Hon’ble Court on 20.08.2024. On the same day, to bring the matter to a quietus, I agreed to give an undertaking that without prejudice to their rights and contentions, the Defendants would cease to use the Mark ‘PRIMUS’.

6. I say that the since then, the Defendant No. 1 has taken proactive steps to change its Mark from “PRIMUS” to “PRISMA CARE”, as explained hereinabove:

i. Defendant No. 1 applied for and obtained a new Registration Certificate under Section 13 of the Punjab Shops and Commercial Establishments Act, 1958 as on 16.09.2024 in the name of “PRISMA CARE”. Copy of said Registration Certificate is annexed herewith as ‘DOCUMENT-II’.

ii. I say that the Defendant No. 1 never operated an official website. Nonetheless, the Defendants have taken all necessary and proactive steps to remove the hospital's presence from third party websites. Specifically, the Defendants deleted the Facebook Page titled “Primus Hospital”, ensuring that all posts, images, and content referencing or associated with the mark 'PRIMUS' were completely removed. It is important to note that, in accordance with Facebook’s Terms and Conditions, the full removal of the page from the internet may take up to 30 days. Copy of the document evidencing the deletion of Facebook post has been annexed herewith as ‘DOCUMENT-III’.

iii. Defendants have also submitted a request to the customer service of Justdial via email to update the hospital’s name from “PRIMUS HOSPITAL” to “PRISMA CARE” in its online listing. Copy of the email dated 17.09.2024 sent to Justdial and the response from Justdial, is annexed herewith as ‘DOCUMENT-IV’.

iv. Defendants have submitted a request to Remedo, an online healthcare platform, to update the hospital’s name from “PRIMUS HOSPITAL” to “PRISMA CARE”. Copy of the email dated sent to Remedo is annexed herewith as ‘DOCUMENT-V’.



v. Defendants have issued a public notice in two leading newspapers, one Dainik Jagron and Pioneer, dated 18.09.2024 in both English and Hindi language, informing the general public, patients, and stakeholders that name of their hospital has been changed from “PRIMUS HOSPITAL” to “PRISMA CARE”. Copy of the said notice has been annexed herewith as ‘DOCUMENT-VI’.

vi. Defendants have unanimously executed a supplementary partnership deed dated 10.09.2024, wherein the partners have mutually agreed to change the name of the firm from “PRIMUS HOSPITAL” to “PRISMA CARE”. Copy of the said supplementary partnership deed is annexed herewith as ‘DOCUMENT-VII’.

vii. Defendant No. 1 has applied for correction in its PAN details to reflect the Mark “PRISMA CARE” instead of “PRIMUS”. Copy of the acknowledgement of application for correction in the PAN details is annexed herewith as ‘DOCUMENT-VIII’.

viii. Defendants have changed/amended their hospital’s name in the existing agreements with various third parties. Copy of an illustrative agreement is annexed herewith as ‘DOCUMENT-IX’.

ix. Defendants have changed the hospital’s name on their letterhead bearing the Mark “PRISMA CARE”/



Copy of sample letterhead bearing the Mark



“PRISMA CARE” / is annexed herewith as ‘DOCUMENT-X’.

x. Defendants have changed the hospital’s name in their Indoor Patient File, Plan of Care, Patient History and Physical Record. Copy of sample patient filed is annexed herewith as ‘DOCUMENT-XT’.

7. I say that the Mark “PRISMA CARE” adopted by the Defendant No. 1 is in no manner identical/deceptively similar to the Mark “PRIMUS”.

xxx xxx xxx”



7. Dr. Abhinav Arora, who is present in Court, submits that the documents, including, brochures, pamphlets, sign boards, etc. bearing the



mark 'PRIMUS' has already been destroyed, as defendants have already adopted a new name. The said statement is taken note of.

8. Learned counsel for the plaintiff expresses satisfaction over the action taken by the defendant. However, he presses for Cost.

9. Considering the submissions made before this Court and considering the fact and circumstances of this case, this Court is of the view, that ends of justice shall be met, if Cost of ₹ 5 lacs is paid by the defendants to the plaintiff.

10. Accordingly, with the consent of the parties, the present suit is decreed in favour of the plaintiff and against the defendants in terms of Prayer 'a' and 'b' of the plaint.

11. Cost of ₹ 5 lacs shall be paid by the defendants to the plaintiff, within a period of one week from today.

12. Since the matter is being settled between the parties, the Registry of this Court is directed to issue a certificate for refund of 50% of the court fees in favour of the plaintiff.

13. The present suit, along with pending applications, stands disposed of.

MINI PUSHKARNA, J

NOVEMBER 27, 2024
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